IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Raju Singh & another Vs. State of Rajasthan
(1) D.B.CRIMINAL JAIL APPEAL NO.357/1986

Raju Singh & another Vs. State of Rajasthan
(2) D.B.CRIMINAL APPEAL NO.351/1986

against the judgment dt.30.7.86 passed by
the Addl.Sessions Judge, Bali
in Sessions Case No.41/1985.

Date of Judgment: Dec.05, 2007

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.Doongar Singh, for the appellants.
Mr.J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER THANVI J.)

1. This appeal is directed against the judgment of the learned Additional Sessions Judge, Bali, District Pali, dated 30.7.1986 whereby he convicted accused appellants Raju Singh and Mohan Singh for the offence under Section 302 read with Sec.34 IPC and sentenced each one of them to undergo imprisonment for

life. At the same time, he acquitted accused Ranjit Singh for the said offence.

2. Facts leading to this appeal are that on 12.10.1985 at 2.30 A.M., one Bhanwar Singh, elder brother of deceased Dungar Singh filed oral report at Police Station, Magartalav, District Pali that on the preceding day's evening, accused Raju Singh, Mohan Singh and Ranjit Singh, sons of Rod Singh and their wives came to his brother's house and were blaming for cutting grass in excess of the share. When Dungar Singh told that he had cut the grass of his own share, they started quarreling in hot exchange, whereupon accused Raju Singh and Mohan Singh throttled the neck of Dungar Singh and Ranjit Singh threw stone on his person. Upon hearing cry, he alongwith Sohan Singh, Durg Singh, Lumb Singh, Nek Singh, Hem Singh, Udai Singh, Amar Singh came on the road and saw the incident. They took him to the house and provided hot water etc., but he died. Upon this report, a case was registered under Section 302 IPC and investigation commenced. Post mortem of the dead body was conducted by Dr.Lalit Chand Bafna, who opined in his report Ex.P.7 that death was caused due to asphyxia as a result of throttling. He also found two abrasions on the body of deceased and one fracture on the leg. After investigation, the police filed challan against all the three accused under Section 302 IPC

before the court of Judicial Magistrate, Bali, who committed the case to the Court of Sessions. Learned trial Judge framed the charges against all the three accused under Section 302 IPC and in alternative, Section 302 read with Section 34 IPC, to which they pleaded not guilty. Prosecution examined 12 witnesses. The statements of accused under Section 313 CrPC were recorded. They produced two witnesses in defence. Upon hearing the arguments, the learned trial Judge acquitted accused Ranjit Singh, as not participant in commission of crime but convicted the accused appellants on the basis of common intention in throttling the neck of deceased for the offence under Sec.302 read with 34 IPC, against which, these two appeals have been separately filed by the accused appellants, one from jail and other through counsel and are being disposed-of together.

3. We have heard learned counsel for the accused appellants and the learned Public Prosecutor.

4. While relying upon the Division Bench decision of this Court in Ahamad Ali Khan vs. State of Rajasthan reported in 1986 Cr.L.R.(Raj.) 170, it has been contended by Mr.Doongar Singh, learned counsel for the appellants, that despite there being no evidence on record as to who throttled the deceased, learned trial Judge convicted the accused appellants by taking shelter of

Section 34 IPC. According to him, on one hand, the learned trial Judge has disbelieved the evidence of participation of accused Ranjit Singh about whom all the witnesses have said alike other two accused and on the other, merely on the basis of evidence of Udai Singh (PW 7), learned trial Judge came to the conclusion that these two accused appellants caused death of deceased Dungar Singh by throttling. According to him, all the witnesses are concocted and they are not the witnesses of scene of occurrence and have implicated accused on account of decision taken by the village Panchayat about not defending them.

5. Per contra, the learned Public Prosecutor has supported the judgment of the learned trial Judge.

6. It is true that the learned trial Judge has convicted the accused appellants only on the basis of Section 34 IPC. To attract the provisions of Section 34 IPC, it is necessary that the criminal act should have been done by more than one persons and the cumulative result of that act should have been in furtherance of the common intention, which is distinguishable from the similar intention. To make out a case of common intention, first thing which the prosecution has to establish is about pre-meeting of the mind or pre-arranged plan and that both have acted in furtherance of such common intention. This

common intention can be inferred either by direct evidence or surrounding circumstances including the conduct of each accused.

7. If, in this light, the facts of the present case are looked into, there is not an iota of evidence that there was any motive or intention of the accused to kill deceased Dungar Singh, who was also belonging to the same caste of the accused and were in relations. Both parties were neighbours and the only incident which is said to have resulted in death of deceased by throttling, is about blaming the deceased for cutting excess grass from the field. Nobody has deposed from the prosecution witnesses that they saw deceased cutting the grass. The witnesses, as putforth during trial by the prosecution, are inter se relatives.

8. The informant Bhanwar Singh (PW 5) is the elder brother of deceased. Udai Singh (PW 7), Amar Singh (PW 8) and Nek Singh (PW 9) are real brothers and maternal uncles of all the three accused and also relatives of the deceased. Lumb Singh (PW 6) is the maternal grand father of the accused. Sohan Singh (PW 3) is the real brother of deceased. If the evidence of these witnesses is looked into, who are inter se relatives of deceased and accused appellants, it is clear as held by the learned Sessions Judge that Udai Singh (PW 7) saw the incident at the

first moment from some distance of his field, which, in the cross examination, is said to be 15 steps. He has deposed in the examination-in-chief that apart from him, Sohan Singh, Bhanwar Singh, Hem Singh and Nek Singh also came on the spot. They all have deposed that accused Raju Singh and Mohan Singh turned around the neck of deceased Dungar Singh and Ranjit Singh inflicted stone blow on him. When he reached on the spot, all accused ran away. This witness has said that Hem Singh was not present on the spot, whereas Hem Singh (PW 4) has said that he saw the incident. Bhanwar Singh (PW 5), who is informant & elder brother of deceased, has deposed that he reached on the spot after hearing cries "bachao bachao". Upon his reaching there, all the three accused ran away. Lumb Singh (PW 6) and Udai Singh (PW 7) have also stated in the similar manner. From the evidence of these eye witnesses, learned trial Judge came to the conclusion that it is not clear as to who caused the death of deceased Dungar Singh by throttling. In our view, this finding of the learned trial Judge appears to be correct on the basis of the statements given by the eye witnesses. However, the learned trial Judge came to the conclusion that since the death has been caused by throttling, therefore, the conviction under Section 34 IPC is justified. In our view, this finding of the learned trial Judge is not correct on true interpretation of Section 34 IPC on account of the following factors:

9. Firstly, when none has actually seen throttling the deceased, then it is quite possible that on account of decision taken by the village Panchayat, the witnesses might not be telling the actual truth and the fact that these witnesses were asked by the village Panchayat not to take side of the accused, has been proved from the testimony of the witnesses in cross examination, particularly of Lumb Singh (PW 6), Udai Singh (PW 7), Amar Singh (PW 8) and Nek Singh (PW 9);

10. Secondly, all the witnesses have deposed about participation of Ranjit Singh by throttling stone on the person of deceased Dungar Singh but this theory has been disbelieved by the learned trial Judge on the basis of there being no injury on the leg by stone from the medical evidence of Dr.Bafna (PW 10). This shows that the witnesses are trying to develop the theory by implicating Ranjit Singh also, who has been acquitted by the learned trial Judge and their statements in this regard are false. In a criminal trial, when a witness speaks partial truth and partial lie, his statement has to be looked into with abundant caution & the maxim falsus in uno, falsus in omnibus i.e. false is one, false is all, applies in such a case.

11. Thirdly, Dr.Bafna (PW 10) has opined on the basis of post

mortem report (Ex.P.7) that there were marks of one thumb on the right side and four fingers on the left side of the neck of deceased. This shows that one person has committed the act of throttling but if the evidence of doctor is looked into in the light of the statement of Sohan Singh (PW 3), who has stated in the examination in chief that he did massage on the body of deceased, whereas post mortem has been conducted in the morning at 10 A.M. on 12.10.1985 i.e. about 12 hours after the death, then it is quite possible that these marks have been caused by massage or while taking deceased to his house;

12. Fourthly, when the death is caused by asphyxia on account of throttling then the person dies within seconds but the witnesses have said, particularly Bhanwar Singh (PW 5) that it took half an hour in taking deceased inside & providing hot water and turmeric oil to him. They also gave him the local treatment. It indicates that deceased did not die soon after throttling or within seconds. Likewise, urine was not detected on the spot, which normally passes on throttling; and

13. Lastly, in absence of any motive on the part of the accused appellants, it cannot be gathered on the basis of omnibus statements of the relative witnesses that the death was caused due to throttling act of the two accused appellants, who said to

have developed motive at the spur of moment.

14. In our view, when no common intention with a pre-planned motive is established, it will not be proper to hold accused appellants guilty merely on the basis of Sec.34 IPC and to convict them under Section 302 read with Sec.34 IPC. The whole prosecution case suffers from infirmities in the testimony of the witnesses and other surrounding circumstances, which are not sufficient for the purpose of holding accused appellants liable for their act.

15. Consequently, we allow these appeals and set aside the judgment of the learned trial Judge dated 30.7.1986 convicting appellants Raju Singh & Mohan Singh u/sec.302 read with Sec.34 IPC and acquit them for the said offence. Appellants are on bail, their bail bonds stand cancelled.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

RANKAWAT JK, PS